U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 27 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner, who is also the beneficiary, filed a motion to reconsider, which the director dismissed. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification as an alien of extraordinary ability in the arts, as a pianist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to petitioners who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act limits this classification to petitioners with extraordinary ability in the sciences, arts, education, business, or athletics. The director determined that although the petitioner presented at least three of the ten criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), the petitioner did not establish his sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director dismissed the petitioner's motion to reconsider, finding that the petitioner did not submit new evidence or establish that the initial decision was incorrectly decided.

On appeal, the petitioner asserts that the director erred in dismissing his motion and asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii) and (viii). He further asserts that the evidence in the record, reviewed in the aggregate, establishes his sustained national or international acclaim and recognition of his achievements in the field. Although the director concluded that the petitioner satisfied three of the regulatory criteria, we conduct appellate review *de novo*, to determine if the petitioner is eligible for the classification. For the reasons discussed below, we agree with the director that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, in the final merits determination, the petitioner has not established his requisite acclaim or recognition in the music field. Accordingly, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the music field, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available. . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained

national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate his sustained acclaim and the recognition of his achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria[1]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

In the director's May 8, 2014 decision denying the petition, the director concluded that the petitioner met this criterion. The evidence in the record does not support this finding. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

As a preliminary matter, the record does not contain primary evidence of an award, which would be a copy of the award certificate, or secondary evidence, such as media coverage of the award selection. The record includes an April 4, 2014 letter from Chief Executive Officer (CEO) and Co-Founder of stating that in the petitioner was selected as the and as a ' (that is one of the 50 winners)" at a competition that organized and produced. Even if Mr. letter constituted an affidavit, only where primary and secondary evidence does not exist or is unavailable may a petitioner rely on affidavits. 8 C.F.R § 103.2(b)(2). The petitioner has not demonstrated that primary and secondary evidence of his award does not exist.

Regardless, the petitioner has not demonstrated that and selection as one of 50 national prodigies, is a qualifying award. Mr. states that the petitioner's achievements at the competition constitute his receipt of a nationally recognized award. In support of his assertion, Mr. provides that the competition was the result of "a nationwide search and competition to identify Algeria's leading talent" and the "jury composed of renowned personalities rigorously reviewed applicants and talents and selected the best amongst them." The petitioner has submitted insufficient evidence to establish that his selection as the and a meets this criterion.

First, the evidence submitted to show the recognition of the petitioner's achievements at the competition is from the entity that organized and produced the competition. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10, 2007 WL 9229758, at *1, 6-7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the competition in nationally circulated publications.

Second, the petitioner has not shown that his selection as the and is recognized in the music field, or recognized by pianists throughout Algeria or internationally. Mr. confirms that the jury that judged the competition composed of a journalist and writer; a producer and reporter; a journalist, writer and editor; a television host and editor-in-chief; and a television and radio producer/host. While not determinative, the evidence does not indicate that anyone in the music field judged the competition. More significantly, the petitioner has not shown the reputation or prestige of his selection in the music field, or that anyone in the music field recognizes this selection as either a national or international level prize or award for excellence. Notably, according to Mr. , "potential" was a factor in the judging.

Third, although Mr. indicates in his letter that the competition was a "nationwide search," neither he nor any other evidence in the record provides information on who could enter the competition or who could be considered for the prize or award. The petitioner has not shown that the competition was open to all pianists in Algeria, including professional and established pianists in the country. The plain language of the criterion requires the petitioner to show receipt of prizes or awards for excellence in the field. An award from a competition that excludes those who are professional or established pianists is not an award for excellence in the music field, as a whole.

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

In his May 8, 2014 decision, the director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion, including a February 12, 2014 letter from Chief Editor at According to Mr. in the television channel broadcasted an episode about the petitioner and featured him as a performing artist. The record reflects that the channel "reaches more than 220 million households and 55 million viewers every week in 200 countries and territories." Accordingly, the petitioner has presented published material about him in other major media, relating to his work in the field for which classification is sought. The petitioner meets this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

On appeal, relying primarily on reference letters, the petitioner asserts that he meets this criterion. The petitioner also points to his performance at , the his other performances in and outside of Algeria, and his collaborations as evidence that he has made original contributions of major significance in the music field. The evidence in the record does not support the petitioner's assertion. To meet this criterion, the

petitioner must demonstrate that his contributions are both original and of major significance. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). Contributions of major significance connotes that the petitioner's work has already significantly impacted the field as a whole. *See Visinscaia*, 4 F. Supp. 3d at 134-36.

First, the petitioner has not shown that his musical compositions and productions constitute contributions of major significance in the musical field, such that they fundamentally changed or significantly advanced the field. According to a pianist and composer, "[t]he depth of each [of the petitioner's] composition[s] is beautifully crafted and written. It is hard to put into words how [the petitioner's] original compositions make audiences feel relaxed and serene." According to a pianist and professor at the in England, the petitioner has "made extraordinary and important contributions by enriching the lives of many with his thoughtful and artistic productions." According to a concert pianist, the petitioner is an "inheritor and medium through which original classical piano works speak to a new generation. It is remarkable how the simplicity and tranquility of [the petitioner's] work connects with an audience that is inundated with sounds and sights of today's multi media bombarded audience." The evidence shows that the petitioner's work has had impact on his audiences. This level of impact, however, is insufficient to demonstrate contributions of major significance in the music field as a whole. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond a musician's audiences. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). To meet this criterion, the petitioner must demonstrate his impact beyond his audiences. He must demonstrate his impact in the musical field as a whole, which the petitioner has not done.

Although the petitioner has written original compositions, the evidence does not establish that the petitioner's style of playing the piano is also original. According to Mr. the petitioner's "unquestionable technical proficiency can be seen, indeed felt, in every note of his compositions as they gracefully and melodiously tell a story." Mr. states that the petitioner "approaches each piano key as a word and assembles them in a way that tells a story." Mr. further states that the petitioner's "simple yet classic approach serves as a wonderful contribution to classical music as it connects a young audience to a centuries-old musical tradition." The evidence in the record does not establish that the petitioner's playing style – approaching each key as a word, playing to tell a story with a simple yet classic approach – is original, such that he is the first pianist or one of the first pianists to use this playing style. The record lacks information relating to this issue. In addition, the evidence does not demonstrate that the petitioner's playing style has had an impact, consistent with contributions of major significance, in the field. The record lacks evidence showing that other pianists have emulated or have been influenced by the petitioner's playing style.

Second, the evidence has not shown that the petitioner's collaboration with had occurred at the time he filed his petition. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of*

Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of future contributions at a level consistent with contributions of major significance. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") As such, the petitioner may not rely on this anticipated collaboration to show that the petitioner meets this criterion.

Similarly, the petitioner has not shown that his collaboration with [redacted] whom Mr. [redacted] describes as "a world renowned and accomplished multi-platinum and gold selling producer with Grammy nominations and Award winning albums to his name," meets this criterion. The petitioner has not shown that working with someone who is accomplished in the music field constitutes evidence of the petitioner's original contributions of major significance in the music field. As a producer, Mr. [redacted] works with a number of different artists; the petitioner has not shown that the mere association and collaboration with Mr. [redacted] signify that all these artists have made original contributions of major significance in the music field. Moreover, [redacted] a concert pianist, composer and recording artist, indicates that the petitioner was in the process of producing an album with Mr. [redacted] The petitioner has not shown that at the time he filed his petition in March 2014, his album was either complete or that he had already made contributions of major significance in the field through the making of the album. As noted, the petitioner may not rely on an anticipated or unfinished project to show that he has met this criterion. *See Matter of Wing's Tea House*, 16 I&N Dec. at 160; *Matter of Izummi*, 22 I&N Dec. at 175-76.

Third, the petitioner's performance at [redacted] does not establish that he meets this criterion. The evidence shows that the petitioner performed as a soloist at the Benefit Concert for the [redacted] at [redacted] in November 2013. According to a document entitled '[redacted]," [redacted] has a number of performance spaces. The petitioner has not submitted evidence showing that performing at [redacted] is indicative of having made a contribution of major significance in the field. The record lacks documents from [redacted] showing that the petitioner was selected to perform at [redacted] based on his contributions in the music field. Although [redacted], a musical/visual artist and technical inventor, along with a number of other references, states that "only the world's best musicians are asked to perform solo concerts at [redacted]," the petitioner has not provided evidence that he was asked to performed because of his contributions in the music field or that a performance at this venue is inherently a contribution to the field as a whole. Similarly, although the evidence shows that the petitioner has performed at the [redacted], and [redacted] Director of [redacted] a recording studio in [redacted] Spain, states that the petitioner has performed at the [redacted] in [redacted] Spain, the evidence in the record does not show that performing at these venues is indicative of a contribution of major significance in the field.

Fourth, although the record includes evidence showing that the petitioner has released an album, this evidence is insufficient to show that the petitioner meets this criterion. According to Mr. [redacted] the petitioner's album received "stellar reviews." According to Mr. [redacted] the petitioner's album "has

been widely and well received by the field." The record lacks evidence showing that the release of albums that receive positive reviews is indicative of a contribution of major significance in the field rather than an ability to successfully work in the music industry. Many performing artists release albums. Without specific evidence showing that the petitioner has made original contributions of major significance in the music field as a whole, the fact that he has released an album does not demonstrate he meets this criterion. The record also lacks evidence showing that the impact of the petitioner's album in the field is consistent with contributions of major significance in the music field as a whole. Similarly, although the evidence shows that the petitioner has performed inside and outside of Algeria, the evidence in the record does not demonstrate that performing in national and international venues is indicative of a contribution of major significance in the field rather than an ability to secure competitive employment opportunities in the performing arts. Indeed, performance is an inherit aspect of being a pianist. The petitioner has not shown that engaging in an inherit aspect of his occupation is indicative of his contributions at a level consistent with contributions of major significance in the field.

Fifth, a number of the reference letters in the record include conclusory statements that are unsubstantiated. For example, according to Mr. , the petitioner "has made enormous contributions to the field with his stellar original music compositions." Mr. , however, does not provide details relating to or explaining how the petitioner's compositions have made contributions to the field, or point to any evidence in support of his conclusory statements. Similarly, when discussing the petitioner's collaboration with Mr. , Mr. states that Mr. "only work[s] with artists that have made original contributions and achieved international renown." Neither Mr. nor the petitioner has pointed to any evidence in the record that supports this assertion. According to Mr. , the petitioner's performances "were attended by thousands of fans of his music." Mr. does not explain the basis of his knowledge and there is no specific evidence in the record that supports this statement. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We have reviewed all the evidence in the record, including reference letters that we have not specifically discussed above, and conclude that the evidence does not establish that the petitioner meets this criterion. Reference letters that provide general praise of the petitioner's skills and abilities as a pianist without specifically providing information on what the petitioner has done that constitutes contributions of major significance in the field is not sufficient to demonstrate that the petitioner meets this criterion. In addition, vague, solicited letters from individuals in the music field that do not specifically identify contributions or provide specific examples of how those contributions influenced the field as a whole are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115.[2] The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as

[2] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the petitioner's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190); *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Accordingly, the petitioner has not submitted sufficient evidence showing that he has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The plain language of the criterion suggests that it is limited to evidence relating to the visual arts. This interpretation is longstanding and has been upheld by a federal district court. *See Negro-Plumpe v. Okin*, 2008 WL 10697512, at *1, 4, 2:07-CV-820-ECR-RJJ at 1, 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under the criterion at 8 C.F.R. § 204.5(h)(3)(vii), because the criterion applies to visual artists). In this case, as the petitioner is not a visual artist and has not created tangible pieces of art that were on display at artistic exhibitions or showcases, we finds that the petitioner has not presented evidence of the display of his work in the field at artistic exhibitions or showcases. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

In the director's May 8, 2014 decision denying the petition, the director concluded that the petitioner met this criterion because he "held a leading role as a soloist performer at [redacted]." The evidence in the record does not support this finding. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *see also Soltane*, 381 F.3d at 145-46.

The evidence in the record shows that in November 2013, the petitioner performed as a piano soloist during a benefit concert for the [redacted] an event that was held at [redacted] The evidence does not establish that the petitioner has performed a role for [redacted] the venue in which the benefit concert took place. In fact, according to a document entitled "[redacted]" a number of

individuals have performed as a soloist at the venue. The petitioner has not shown that the fact that these individuals have performed as a soloist at a particular venue is indicative of their leading or a critical role for the venue.

The evidence shows that the petitioner, as the solo musical performer, has performed a leading and critical role for the benefit concert held in [redacted] The plain language of the criterion, however, requires the petitioner to show that he has performed a leading or critical for organizations or establishments, not an event organized by organizations or establishments. The petitioner's has not shown that his role in one event is indicative of his leading or critical role for the [redacted] as a whole, which hosts and organizes an unspecified number of events and concerts annually. Even assuming that the petitioner has performed either a leading or critical role for the [redacted], the petitioner has not submitted sufficient evidence relating to the reputation of the foundation from which we may conclude that the foundation is an organization or establishment that has a distinguished reputation. Although the [redacted] article indicates that the foundation is "an award-winning non-profit" organization, neither the article nor any other evidence in the record indicates what awards the foundation has received and the record does not include evidence demonstrating that the awards are of such significance that they establish that the foundation is an organization or establishment that has a distinguished reputation.

Moreover, although the petitioner has submitted evidence showing that he has performed in a number of musical performances, the petitioner has not shown that his musical performances meet the criterion. The plain language of the criterion requires the petitioner to show his leading and critical role for organizations and establishments, as a whole, not merely events organized by organizations and establishments. In addition, the petitioner has not submitted evidence relating to the organizing entities of these musical performances to establish that the organizing entities have a distinguished reputation, as required by the plain language of the criterion.

Accordingly, the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

B. Final Merits Determination

As discussed, the only criterion that the petitioner meets is the published material criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Notwithstanding this finding, in accordance with the *Kazarian* opinion, given that the director's sole basis of denial was a final merits determination, we will also conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that [he] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that he "has sustained national or international acclaim and that [his] achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. For the reasons discussed below, the petitioner has not made such a showing. Accordingly, we dismiss his appeal.

With respect to the published material criterion, the sole criterion the petitioner has satisfied, although the record includes other evidence relating to this criterion in addition to the television show that was about the petitioner, including articles and screen shots of the petitioner's television appearances, the petitioner has not shown that this other evidence meets the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). The record includes insufficient evidence demonstrating that the publications and television programs constitute professional or major trade publications or other major media. Specifically, the record lacks information relating to the nature, reach, readership level or viewership level of the publications and television programs. The petitioner has submitted a Wikipedia entry pertaining to a French newspaper. The Wikipedia entry, however, does not have any evidentiary weight because there are no assurances about the reliability of the content from this open, user-edited Internet site.[3] *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). In addition, although the record includes a article entitled "" the article appears to be promotional material and it does not include information on its author as required under the plain language of the published material criterion. In short, although the petitioner has met the published material criterion with evidence showing that he appeared in one television episode on a major media network, a one-episode appearance is not indicative of the petitioner's sustained national or international acclaim as a pianist. Rather, this evidence shows that a television station found the petitioner and his biographic information to be worthy of reporting and worthy of airtime. The evidence in the record shows that in addition to being a pianist, the petitioner is also a trained physician. The evidence shows that much of the media attention the petitioner received was because of his unique professional background. This unique professional background, however, is not indicative of the petitioner being one of the top pianists in or outside of Algeria.

The record includes other evidence of the petitioner's accomplishments as a pianist. The evidence, viewed in the aggregate, does not establish the petitioner's national or international acclaim or demonstrate that he has risen to the very top of the music field. For the reasons discussed above, the petitioner has not shown that his selection as the and at an organized competition constitute nationally or internationally recognized awards. The

[3] Online content from Wikipedia is subject to the following general disclaimer entitled "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY":

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petitioner has also not demonstrated how these awards are indicative of or consistent with sustained national or international acclaim, such as, for example, through evidence that the selection of the nominees and awardees was reported nationally in the field such that those who received the awards garnered name recognition in the field.

Similarly, the petitioner has not demonstrated that his one-time performance at a benefit concert held at is indicative of or consistent with a finding that he is at the top of his field and has achieved sustained national or international acclaim. For example, the petitioner did not submit evidence that the performance garnered him name recognition or that his participation was a major part of the event's promotion nationwide.

According to , the former at the U.S. Embassy in Algeria, that embassy selected the petitioner for an extended arts fellowship to the In general, selection for a fellowship or scholarship, even a competitive one, does not demonstrate that the recipient has risen to the top of his field. Rather, fellowships and scholarships are offered to individuals who show potential in a particular field and they provide opportunities for the individuals to further learn and master relevant skills. For this reason, the applicant pool for fellowships and scholarships generally does not include professional and established musicians. As such, being selected for a fellowship shows that the petitioner possesses the potential to become a successful pianist, but does not demonstrate that the petitioner has already become an established pianist who has risen to the very top of his field. Indeed, according to Ms. one of her duties was to "identif[y] promising individuals in the arts . . . for visits and educational training in the United States."

Similarly, although the evidence shows that the petitioner has been working as a pianist, specifically, he has performed in and outside of Algeria, performed at well-known venues, including and has produced at least one album, the petitioner has not shown that engaging in these types of activities is indicative of sustained national or international acclaim rather than an ability to work successfully in the occupation. The evidence in the record establishes that the petitioner is a talented pianist who has the potential to achieve success in the music field. The evidence in the record, however, does not demonstrate that the petitioner has already become one of that small percentage at the top of the field in Algeria or internationally. Indeed, according to Ms. the petitioner is at "the beginning of a long and successful career in the music field." We have considered all the evidence in the record, including evidence not specifically discussed above, and conclude that the record does not support the petitioner's claim that he is an alien of extraordinary ability in the music field. Even considered in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

A review of the evidence in the aggregate, under the preponderance of the evidence standard, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The record lacks sufficient relevant, probative, and credible evidence showing that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.